IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/08/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K.MISRA
AND
THE HONOURABLE MR. JUSTICE S.R.SINGHARAVELU

WRIT PETITION No. 7199 of 2001
and
W.P.M.P.No.10294/2001

1. Union of India represented by
the Director General of Health Services
250A, Nirman Bhavan, New Delhi.9.

2. The Principal Accountant General
(A & E)
Tamil Nadu,
261, Anna Salai, Teynampet,
Chennai.18. .. Petitioners

-Vs-

1. D. Ramadoss

2. The Registrar
Central Administrative Tribunal
City Civil Court Buildings
Chennai.104.

3. The Executive Engineer
Buildings Construction
Division, Old Judge Bungalow Vilagam
Thanjavur-613 001. .. Respondents

Petition filed under Article 226 of The Constitution of India, praying this Court to issue a Writ of Certiorari,calling for the records relating to the order passed by the Tribunal, 2nd respondent herein dated 8.11.2000 in O.A. No. 818/1999 and quash the same.

!For petitioner ... Mr.S. Udayakumar
Addl.Central Government
Standing Counsel

^For 1st respondent ... Mr.N. Balakrishnan

:ORDER
(Order of the Court was made by S.R.SINGHARAVELU,J.,)

The present Writ Petition has been filed by the Department against the order of the Central Administrative Tribunal, Madras Bench dated 8 .11.2000 made in O.A. No. 818 of 1999. The 1st respondent herein has filed the said application before the Tribunal for giving a direction to the respondents therein to reimburse the full amount incurred for the by-pass surgery undergone by him at the Apollo Hospital and to quash the proceedings by which the respondents have confined the amount to certain limit.

2. The case of the applicant is that he was admitted in Thanjavur Medical College Hospital during October,1995 for heart attack and as per the advice of the Cardiologist, he underwent Angiography Test at Apollo Hospital, Chennai in December, 1995. Then he underwent by-pass surgery in January,1996 and they charged Rs.22,155/- for Angiography Test and a sum of Rs.1,33,302/- for the by-pass surgery. He paid the entire amount and submitted the bill to the 3rd respondent for reimbursement. But the 3rd respondent only paid a total sum of Rs.81,000/- (Rs.9,000/- for Angiography Test and Rs.72,000/- for by-pass surgery). The applicant is entitled to get the entire amount spent by him as the Apollo hospital is also recognised by the Government. Hence the applicant has filed the O.A. before the Tribunal.

3. The respondents viz., authorities in their reply stated that as per Civil Services (Medical Attendance) Rules, 1944, the rates for reimbursement of charges for Angiography and Coronary by-pass surgery at recognised private hospitals have been fixed as per package deal rate and therefore, the applicant is not entitled to any further amount.

4.After considering the materials on record, the Tribunal thought it fit to suggest the first appellant herein to consider the abovesaid proposal by constituting an Expert committee and taking the legal position into consideration and to formulate further guidelines in the matter as the first appellant herein thinks feasible, practical and necessary. Aggrieved over the same, the Department has filed this present Writ Petition.

5. The Tribunal was effectively taken away from the main issue of the case, simply by giving undue importance to the Official Memorandum issued by the petitioners indicating that beneficiary will be entitled only for package amount and the amount charged by the private institution over and above the prescribed rate, will have to be borne by the beneficiaries. Even though the Official Memorandum to that effect was issued and that was also considered as a Rule, such Rule cannot have overriding effect of the actual Rule statutory in character. Such statutory Rule is found in Central Services(Medical Attendance) Rules and which is as follows:

Rule 6 of the Medical Attendance Rules:
6(1) A Government Servant shall be entitled, free of charge, to treatment--
(a) in such Government hospital at or near the place where he falls ill as can in the opinion of

the authorised medical attendant provide the necessary and suitable treatment or

(b) if there is no hospital as is referred to in sub-clause(a) in such hospital other than a Government hospital at or near the place as can in the opinion of the authorised medical attendant, provide the necessary and suitable treatment.
(2) Where a Government servant is entitled under sub-rule(1), free of charge, to treatment in hospital, any amount paid by him on account of such treatment shall, on production of a certificate in writing by the authorised medical attendant in this behalf, be reimbursed to him by the Central Government:
Provided that the controlling officer shall reject any claim if he is not satisfied with its genuineness on facts and circumstances of each case, after giving an opportunity to the claimant of being heard in the matter. While doing so, the controlling Officer shall communicate to the claimant the reasons, in brief, for rejecting the claim and the claimant may submit an appeal to the Central Government within a period of 45 days of the date of receipt of the order rejecting the claim"

6. When Rule 6(2) enables the beneficiary to claim the actual amount that was spent in the hospital, no other rule can have any overriding effect to restrict such benefits enshrined in the statutory rules. It is in that way, the Official Memorandum restricting the claim of the beneficiary may not have much force than the above statutory rule 6(2) of Central Services(Medical Attendance) Rules.

7. In fact, such a situation arose in the case law in KUMAR, E.V. VS UNION OF INDIA (2003(4) CTC 29) where this Court had held that it is open to the Government Servant who is entitled to be treated in a hospital other than Government Hospital, if such hospital as referred to in sub-clause(a) is not available, he can get treatment in a hospital other than Government Hospital at or near the place as can in the opinion of the authorised medical attendant, provide the necessary and suitable treatment. That decision was also received approval by the Supreme Court in an earlier case in S. JAGANNATH VS UNION OF INDIA AND OTEHRS (1997(2) SCC 87) wherein the Supreme Court has held that " if the Government Servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the

expenditure incurred by the Government servant".

8. By following the above principles, the first respondent viz., D. Ramadoss is entitled for the claim of Rs.1,33,302/- including the amount that was already paid in this regard. The said amount has to be paid within two months from this date and in case of any default, the said amount will carry interest at the rate of 12% p.a. As such interest is allowed in RAMAYEE,V. VS.THE COMMISSIONER OF PUDUKOTTAI MUNICIPALITY (1992 WLR 330) and HEMA DEVI AND ANOTHER VS STATE OF BIHAR AND OTHERS (2002(6) Sup.417). The Writ Petition is disposed of accordingly. No costs. Consequently, W.P.M.P.No.10294/2001 is closed.

Index: Yes

vbs

W.P.NO.7199 OF 2001

P.K. MISRA, J
and
S.R. SINGHARAVELU, J

(The Order of the Court was made by P.K. MISRA, J)

The matter was listed □For being mentioned□ to-day.

2. Heard the learned counsels appearing for the parties.

3. From paragraph 2 of the judgment, it is apparent that the expenditure incurred was Rs.22,155/- for Angiography and Rs.1,33,302/- for by-pass surgery, out of which a sum of Rs.9,000/- had been allowed for Angiography and Rs.72,000/- for by-pass surgery. The Tribunal had given a direction for payment of the entire sum. However, in paragraph 8 of the judgment, reference is only made to the claim of Rs.1,33,3 02/-, which is relatable to the expenditure incurred for by-pass surgery, but no reference has been made to the expenditure of Rs.22,155/- for Angiography, which is a typographical mistake and to be corrected.

4. Accordingly, we direct that the amount in paragraph 8 of the judgment should be read as Rs.1,55,457/- instead of Rs.1,33,302/-.

(P.K.M.,J) (S.R.S.,J)
14-10-2004

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To
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Central Administrative Tribunal
City Civil Court Buildings
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